IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1158 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARBHIM VITHALBHAI & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR.R.J.OZA with Mr.Zubin F. Bharda, Learned Advocate for Appellants No.1 - 2.
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 07/02/2007

ORAL JUDGMENT

Present appeal is arising out of the judgment and order dated 18th September, 1992, rendered by the learned Additional Sessions Judge,

Bhavnagar passed in Summary Case No.4 of 1985 whereby the appellants-accused are convicted and sentenced for the offence punishable under Section 3 (2) (d) and 7 of the Essential Commodities Act and were sentenced to under go rigorous imprisonment for three months and to pay a fine of Rs.500/- each, in default thereof to undergo simple imprisonment for one month.

2. As per the prosecution case, the appellant-accused No.1 was holding licence to sell and distribute the kerosene as fair price shop dealer at village Hathab, Dist: Bhavnagar. The said shop was visited by the complainant, Kanaiyalal Amrutlal Rajguru, Supply Inspector, Bhavnagar Division on 28th November, 1984 and major irregularities were found by him. On a detailed report submitted by the complainant and statements of number of witnesses were recorded by him, the District Collector, Bhavnagar had decided to prosecute the appellants-accused and directed the complainant to file a formal criminal complaint for the offence punishable under Section 3 read with Section 7 of the Essential Commodities Act. It is the say of the prosecution that the accused had purchased 1600 litters of kerosene (8 barrels) on 27th November, 1984 from Shri

Mehta Automobiles and on that very day he had disposed of stock of 1230 litters of kerosene by preparing 410 bills. In-fact, there was no sell on 27th or 28th November, 1984. It was shown that closing stock was 370 litters of kerosene on 27th November, 1984. In furtherance of checking and inspection, the Supply Inspector had also found 400 litters of kerosene and on tallying the account as to the sell and stock of kerosene, about 30 litters of kerosene was found in excess with him. For the purpose of checking, the Supply Inspector, had examined and verified from 46 card holders, out of which 20 card holders were not having any endorsement in the card and some of the card holders have said that the entries have been made in their cards by the accused either on 29th or 30th November, 1984 so that he can save himself from the charges levelled against them.

3. Heard, Mr.R.J.Oza with Mr.Zubin F. Bharda, learned Advocate appearing for the appellants and learned A.P.P. for the respondent-State.

4. The Counsels appearing for both the sides have taken me through the judgment under challenge, as well as, the evidence led during the course of

trial. Statements of both the accused have been read over before the Court where according to prosecution both the accused persons have admitted certain facts which can be used as corroborative piece of evidence while appreciating the case of the prosecution. I have considered the debate on the subject.

5. It is true that all the persons whose statements were recorded by the Supply Inspector have not been examined and therefore their version would not become helpful to the Court in arriving at conclusion. However, the learned Judge has rightly considered the say of the complainant. There is no error in not appreciating the evidence of the complainant because his oral say is supported by documentary evidence.

6. The learned Judge has also considered the fact that the accused had practically admitted the irregularities that were found at the time of checking and supervision made by the Competent Officer on 28th November, 1984. Checking and cross-checking have been done on immediate succeeding days and therefore, it is not possible for the Court to view the procedure adopted by the Inspecting Officer

with any doubt. There is no error or perversity in the finding recorded by the learned trial Judge and therefore the Court is of the view that there does not exit any merits in the appeal and same requires to be dismissed.

7. At the same time, the Court cannot ignore the fact of the endorsement made in the stock register. The Court can consider the list prepared by the Officer, who had visited the shop of the accused and he had no reason to create this list to implicate the accused in such a serious offence because card contains various details including the name of the card holders or the persons related to the card holders and the nature of relation of the card holders who had allegedly taken kerosene from the shop of the accused.

8. Before instituting a criminal case against the accused, statements of one Harbhimbhai Vittalbhai as well as Vitthalbhai Khatabhai were considered and while recording conviction the admission made by both the accused have been considered in correct perspective. It is not the defence that at the time of inspection, total stock was not of 400 litters of

kerosene and it was less than 400 litters. Where there is no denial about the purchase of stock of kerosene on 27th November, 1984 from the whole seller, then, there is no reason to disbelieve the allegation made in the complaint and the oral version of the complainant.

9. So far as quantum of punishment is concerned, the trial Judge has also considered the following aspects.

i) That the offence committed by the accused is the first offence.

ii) The business was closed down by the accused.

iii) It would be sufficient if the minimum punishment prescribed under the law is imposed, instead of, maximum punishment i.e. 7 years.

iv) The amount of fine of Rs.5,000/- imposed by the lower Court is found inadequate.

10. The learned trial Judge ought to have imposed much higher amount of fine but as there is no appeal preferred by the State for enhancement of

punishment, the Court finds that no error in the operative part of the order of conviction and sentence passed by the learned trial Judge can be said to have been committed by the learned trial Judge.

10. One of the alternative submission made on behalf of the appellants-accused is that the accused persons are aged and should be given the benefit of Probation of Offenders Act because it would be harsh to send the appellants-accused in jail after laps of seven years especially when they are on bail. Learned Advocate has also submitted that atleast the rigorous imprisonment should be converted into simple imprisonment. However, learned A.P.P., Ms.Pandit has strongly resisted and submitted that this is a case of selling kerosene in a black market on the day on which it was purchased from a whole seller and such an accused should not be granted any benefit under the Probation of Offenders Act under the provisions of Section 360 read with Section 361 of the Code of Criminal Procedure. However, the Court, if think fit may alter the punishment from rigorous to simple because the accused must have been at older age. The ultimate effect of the imprisonment requires to be

seen. So this submission is found acceptable to the Court and the Court is of the view that minimum punishment prescribed can be altered and converted into simple imprisonment under the given circumstance.

11. In the result, Criminal Appeal No.1158 of 1992 is hereby partly allowed. While confirming the judgment and order of conviction dated 18th September, 1992, rendered by the learned Additional Sessions Judge, Bhavnagar passed in Summary Case No.4 of 1985 convicting the appellants-accused for the offence punishable under Section 3 (2) (d) and Section 7 of the Essential Commodities Act, the order of sentence is hereby altered.

11.1 The appellants-accused are now hereby ordered to undergo the substantive sentence of simple imprisonment for (03) three months for the offence punishable under Section 3 (2) (d) and Section 7 of the Essential Commodities Act, instead of rigorous imprisonment for (03) three months as imposed by the learned trial Judge for the aforesaid offence. The appellants-accused shall surrender before the concerned trial Court to serve the sentence within a

period of 04 (four) weeks from today; failing which the concerned learned trial Judge shall issue non-bailable warrant against the appellants-accused to serve the sentence.

11.2 Bail Bond of the appellants-accused shall stand cancelled. Order and Direction accordingly.

(C.K.BUCH, J.)

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